

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Johnsonburg Community Television, Inc.)	File No. EB-02-TS-375
)	
Operator of Cable System in:)	
)	
Johnsonburg, Pennsylvania)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: November 13, 2003**Released: November 17, 2003**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this *Order*, we deny the request of Johnsonburg Community Television, Inc. ("JCTI") to extend the temporary, 12-month waiver of Section 11.11(a) of the Commission's Rules ("Rules") previously granted for the above-captioned cable television system.¹ Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.²

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.³ In 1994, the Commission adopted rules requiring cable systems to participate in EAS.⁴ In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.⁵ The

¹ *Johnsonburg Community Television, Inc.*, 18 FCC Rcd 8554 (Enf. Bur., Tech. & Pub. Safety Div., 2003) ("Waiver Order").

² 47 C.F.R. § 11.11(a).

³ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations" 47 U.S.C. § 544(g).

⁴ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994), reconsideration granted in part, denied in part, 10 FCC Rcd 11494 (1995).

⁵ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*,

Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁶ However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.⁷ In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.

3. On July 29, 2002, JCTI filed a request for a temporary, 24-month waiver of Section 11.11(a) for the captioned cable system. In its waiver request, JCTI stated that this small, rural, cable system served approximately 1,432 subscribers. In support of its waiver request, JCTI asserted that the estimated \$10,000 cost to install EAS equipment at the system would impose a substantial financial hardship on it and provided financial statements for 2001 and 2002 in support of this assertion. On May 2, 2003, we granted JCTI a temporary, 12-month waiver of Section 11.11(a) for its small cable system.⁸ We concluded that the financial data and other information submitted by JCTI did not justify a waiver period of longer duration.

4. On September 15, 2003, JCTI filed a request for a 24-month extension to the temporary, 12-month waiver granted in the *Waiver Order* for the captioned cable system. JCTI states that it is a non-profit company with a growing accumulated deficit. JCTI further states that the captioned cable system serves approximately 1,385 subscribers, reflecting a 3.3 percent customer loss within the year. JCTI submits that the deterioration of its customer base and finances has increased its financial hardship. JCTI asserts that an extension will allow time for the price of EAS equipment to drop and for JCTI to budget to purchase the equipment.

5. Based upon our review of the additional information submitted by JCTI, we do not find that an extension of the 12-month waiver of Section 11.11(a) of the Rules granted for the captioned cable system is warranted. In particular, the information provided by JCTI does not support financial hardship of a magnitude that would warrant a waiver extension to install EAS equipment. JCTI's gross income is significantly more than the cost of EAS equipment. Indeed, its financial statement shows that it has liquid assets sufficient to cover the expense. Regarding JCTI's assertion that an extension will allow time for the price of EAS equipment to drop, we note that the Commission has authorized cable systems serving fewer than 5,000 subscribers to install FCC certified decoder-only units, rather than both encoders and decoders.⁹ Such decoder-only units are available at a substantially lower cost.¹⁰ Further, JCTI has had

Second Report and Order, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997).

⁶ *Id.* at 15512-13.

⁷ *Id.* at 15516-15518.

⁸ 18 FCC Rcd at 8554.

⁹ *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Report and Order*, EB Docket No. 01-66, 17 FCC Rcd 4055 (2002).

¹⁰ Three manufacturers have received equipment certifications from the Commission for decoder-only units. See www.fcc.gov/eb/eas/certs.html. See also *Public Notice*, Notice Regarding FCC Certification of EAS Decoder,

more than eight years since the EAS rules were initially adopted to budget for EAS equipment. It is particularly troubling that when we gave JCTI a one-year extension rather than a two-year extension, JCTI did not then begin budgeting for EAS equipment and, indeed, now seeks an even longer extension (a total of 36 months from October 1, 2002) that we originally denied. Accordingly, we deny JCTI's request for a waiver extension.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹¹ Johnsonburg Community Television, Inc.'s request for a waiver extension **IS DENIED**.

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Johnsonburg Community Television, Inc., Christopher C. Cinnamon, Esq., Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

DA 02-2312 (September 19, 2002). EAS decoders have been advertised at a cost of approximately \$2,000.

¹¹ 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.